

HOUSE BILL 797

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2004 Regular Session
4r2223
CF 4r2736

By: **Delegates Patterson, Kelley, O'Donnell, Hennessy, Vallario, Anderson, Benson, Brown, Cane, Carter, Dumais, Haynes, Jones, Kirk, Lee, Marriott, Nathan-Pulliam, Owings, Paige, Petzold, Ramirez, Ross, Taylor, and V. Turner**

Introduced and read first time: February 6, 2004
Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Nonviolent Drug Offenders - Drug Treatment Alternative to Incarceration**

3 FOR the purpose of modifying the authority of a court to commit a certain criminal
4 defendant to certain treatment to require that a drug and alcohol counselor
5 determine that the defendant has an alcohol or drug dependency before the
6 court may order that the defendant be committed to an appropriate alcohol and
7 drug abuse treatment program as recommended by a drug and alcohol
8 counselor; requiring a court to require a certain defendant to undergo an
9 evaluation of eligibility for drug treatment by a certain counselor; requiring a
10 court to commit to the Department of Health and Mental Hygiene a certain
11 defendant for drug treatment as a condition of probation instead of incarceration
12 under certain circumstances; providing for a certain exception; setting forth the
13 circumstances under which a certain probation may be revoked; requiring a
14 court to vacate a certain conviction and order a certain expungement under
15 certain circumstances; providing that a certain expungement may not be
16 deemed a conviction for certain purposes; requiring the State Commission on
17 Criminal Sentencing Policy to adopt certain guidelines; and generally relating to
18 requiring drug treatment as an alternative to incarceration for nonviolent drug
19 offenders.

20 BY repealing and reenacting, with amendments,
21 Article - Health - General
22 Section 8-507
23 Annotated Code of Maryland
24 (2000 Replacement Volume and 2003 Supplement)

25 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
26 MARYLAND, That the Laws of Maryland read as follows:

1 **Article - Health - General**

2 8-507.

3 (a) (1) If a court finds in a criminal case that a defendant has an alcohol or
4 drug dependency AS DETERMINED BY A DRUG AND ALCOHOL COUNSELOR, the court
5 may commit the defendant as a condition of release, after conviction, or at any other
6 time the defendant voluntarily agrees to treatment to the Department for [inpatient,
7 residential, or outpatient treatment] AN APPROPRIATE ALCOHOL AND DRUG ABUSE
8 TREATMENT PROGRAM AS RECOMMENDED BY A DRUG AND ALCOHOL COUNSELOR.

9 (2) A COURT SHALL REQUIRE EACH DEFENDANT WHO IS FOUND GUILTY
10 OF A FIRST OR SECOND VIOLATION OF § 5-601, § 5-603, § 5-604, § 5-605, § 5-620, OR §
11 5-708 OF THE CRIMINAL LAW ARTICLE TO UNDERGO AN EVALUATION OF ELIGIBILITY
12 FOR DRUG TREATMENT BY AN ALCOHOL OR DRUG COUNSELOR.

13 (3) UNLESS THE COURT STATES IN WRITING THAT IT IS CONTRARY TO
14 THE INTEREST OF JUSTICE TO DO SO, A COURT SHALL COMMIT A DEFENDANT TO
15 THE DEPARTMENT FOR DRUG TREATMENT AS A CONDITION OF PROBATION BEFORE
16 OR AFTER JUDGMENT INSTEAD OF INCARCERATION IF:

17 (I) THE DEFENDANT IS FOUND GUILTY OF:

18 1. A FIRST OR SECOND VIOLATION OF § 5-601, § 5-603, § 5-604,
19 § 5-605, § 5-606, § 5-620, OR § 5-708 OF THE CRIMINAL LAW ARTICLE; OR

20 2. A CRIME RESULTING FROM DRUG ABUSE OR ADDICTION,
21 AS DETERMINED BY THE COURT;

22 (II) THE CRIME WITH WHICH THE DEFENDANT IS CHARGED DOES
23 NOT ARISE OUT OF AN INCIDENT IN WHICH THE DEFENDANT WAS ALSO CHARGED
24 WITH A CRIME OF VIOLENCE, AS DEFINED IN § 14-101 OF THE CRIMINAL LAW
25 ARTICLE;

26 (III) THE DEFENDANT WAS NOT CONVICTED OF A CRIME OF
27 VIOLENCE, AS DEFINED IN § 14-101 OF THE CRIMINAL LAW ARTICLE, WITHIN THE
28 PREVIOUS 5 YEARS; AND

29 (IV) A DRUG AND ALCOHOL COUNSELOR DETERMINES THE
30 DEFENDANT TO BE ELIGIBLE FOR DRUG TREATMENT.

31 (4) PROBATION IMPOSED UNDER THIS SECTION MAY NOT BE REVOKED
32 FOR A DRUG-RELATED VIOLATION EXCEPT UPON:

33 (I) THE COURT'S CONSULTATION WITH THE DEFENDANT'S DRUG
34 TREATMENT COUNSELOR; AND

35 (II) A RECOMMENDATION BY THE TREATMENT COUNSELOR THAT
36 NO MODIFICATION TO THE CONDITIONS OF PROBATION IS LIKELY TO PROMOTE THE
37 DEFENDANT'S SUCCESSFUL COMPLETION OF THE TREATMENT PROGRAM.

1 (b) Before a court may commit a defendant to the Department for treatment,
2 the court shall:

3 (1) Offer the defendant the opportunity to receive treatment; and

4 (2) Obtain the written consent of the defendant:

5 (i) To receive treatment; and

6 (ii) For the reporting of information back to the court; and

7 (3) Consult with the Administration.

8 (c) The Department shall provide the services required by this section.

9 (d) The Department shall engage in reasonable efforts to facilitate the
10 admission of a defendant to the appropriate treatment facility.

11 (e) Unless the court allows the defendant to provide the defendant's own
12 transportation, on commitment or release of a defendant under this subtitle, the court
13 shall order transportation by law enforcement officials, detention center staff, or
14 sheriff's department staff within the local jurisdiction.

15 (f) (1) A defendant's withdrawal of consent to treatment shall be promptly
16 reported to the court.

17 (2) The defendant shall be returned to the court within 7 days for further
18 proceedings.

19 (g) A defendant who is committed for treatment under this section may
20 question at any time the legality of the commitment by a petition for a writ of habeas
21 corpus.

22 (h) (1) A commitment under this section shall be for at least 72 hours and
23 not more than 1 year.

24 (2) On good cause shown by the Administration, the court may extend
25 the time period for providing the necessary treatment services in increments of 6
26 months.

27 (3) Except during the first 72 hours after commitment, the Director or a
28 designee of the Director may terminate the commitment if the Director or the
29 designee determines that:

30 (i) Continued commitment is not in the best interest of the
31 individual; or

32 (ii) The individual is no longer amenable to treatment.

33 (i) (1) [When] EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS
34 SUBSECTION, WHEN an individual is to be released from a commitment under this

1 section, the Director or the Director's designee shall consult with the court to
2 determine if the individual is to be returned to the court.

3 (2) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, IF A
4 DEFENDANT WAS COMMITTED TO TREATMENT UNDER SUBSECTION (A)(2) OF THIS
5 SECTION AND SUCCESSFULLY COMPLETES THE TREATMENT PROGRAM, THE COURT
6 SHALL ORDER THAT:

7 (I) ANY CONVICTION RELATED TO A VIOLATION DESCRIBED IN
8 SUBSECTION (A)(2) OF THIS SECTION BE VACATED; AND

9 (II) EACH COURT RECORD, POLICE RECORD, OR OTHER RECORD
10 THAT THE STATE OR A POLITICAL SUBDIVISION OF THE STATE KEEPS AS TO THE
11 CHARGES BE EXPUNGED, UNLESS THE STATE OBJECTS AND SHOWS CAUSE WHY A
12 RECORD SHOULD NOT BE EXPUNGED.

13 (3) AN EXPUNGEMENT ORDERED UNDER THIS SUBSECTION MAY NOT BE
14 CONSIDERED A CONVICTION FOR PURPOSES OF DISQUALIFICATIONS OR
15 DISABILITIES IMPOSED BY LAW ON CONVICTION OF A CRIME.

16 (j) In the event an individual committed under this section leaves a treatment
17 facility without authorization, the responsibility of the Department is limited to the
18 notification of the court that committed the individual as soon as it is reasonably
19 possible.

20 (k) Nothing in this section imposes any obligation on the Administration:

21 (1) To treat any defendant who knowingly and willfully declines to
22 consent to further treatment; or

23 (2) In reporting to the court under this section, to include an assessment
24 of a defendant's dangerousness to one's self, to another individual, or to the property
25 of another individual by virtue of a drug or alcohol problem.

26 (l) Any time served by a criminal defendant held for evaluation or committed
27 for treatment shall be credited against the sentence imposed by the court.

28 SECTION 2. AND BE IT FURTHER ENACTED, That the State Commission on
29 Criminal Sentencing Policy shall adopt, and revise as necessary, sentencing
30 guidelines to ensure that the drug treatment program established by this Act is
31 implemented in accordance with this Act.

32 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
33 October 1, 2004.